



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

open mines, and an actual incumbrance of the inheritance with easements, or the complete extinguishment, by a conveyance in fee, of the entire estate in the land; yet, since the only alternative appears to be a decision, the practical effect of which is to deprive the life tenant of the beneficial use of the land, perhaps this loose analogy furnishes the best, though an unsatisfactory, avenue of escape from a perplexing problem.

CONSTITUTIONALITY OF A STATE TAX ON MOVABLES SITUATED OUTSIDE THE STATE. — The power of a state to tax persons and things within its confines is limited by the clause of the Constitution, that no person shall be deprived of property without due process of law. In considering what forms of taxation do not violate this clause, two kinds of taxes must be recognized. Imports, inheritance taxes, licenses, etc. are examples of the first class. They are charges imposed by the state upon persons for privileges granted to them.¹ The nature of the second class is entirely different. In levying taxes of this sort, the state is apportioning the expenses of government among all its citizens. Two methods of making this apportionment which satisfy the requirement of due process of law may be suggested. Each person can be called upon to bear a proportion of the expenses of government commensurate to the proportion of benefit he has received from the state. The second method would be to apportion the taxes among the citizens of the state in proportion to their relative abilities to pay them.² A tax upon a person the amount of which is determined by the value of the property he owns within the state is an example of the first method of apportionment, because the best measure of the amount of protection derived from the state is the amount of property owned. A tax on incomes on the other hand exemplifies the tax upon a person in proportion to his ability to pay. Of course these are but rough approximations, but so long as either principle underlies the tax it is valid.

Does a tax upon a person based upon the amount of personal property owned by him outside of the state meet either requirement? Such a tax has been supported by some decisions,³ by the text-writers,⁴ and by long usage; but it has at length been declared unconstitutional by the Supreme Court of the United States. *Union, etc., Company v. Kentucky*, U. S. Sup. Ct., Nov. 13, 1905 (two judges dissenting). This result is the logical outcome of two previous decisions,⁵ and of the proposition (which the court assumes as undeniably settled) that realty without the state cannot be taxed at the domicile of the owner.⁶ Certainly such a tax is not a charge upon a person based upon the amount of protection he derives from the state, for the maxim *mobilia sequuntur personam* has been entirely discredited.⁷ It has been said that, being based upon the wealth of a citizen, it is a tax upon him graduated according to his ability to pay.² This is not, however, a tax upon a person based upon his ability, as compared with the ability of other

¹ Matter of Swift, 137 N. Y. 77, 88; Knowlton v. Moore, 178 U. S. 41, 47.

² See Beale, Foreign Corporations, § 483.

³ Wheaton v. Mickel, etc., May, 63 N. J. L. 525.

⁴ See Wharton, Conflict of Laws, 3d ed., § 80 a.

⁵ Louisville, etc., Co. v. Kentucky, 188 U. S. 385; Delaware, etc., Co. v. Pennsylvania, 198 U. S. 341.

⁶ Louisville, etc., Co. v. Kentucky, *supra*, at 398.

⁷ See Hoyt v. Commissioners of Taxes, 23 N. Y. 224.

citizens, to pay, since under it, A who owns one million dollars worth of realty and no personalty escapes taxation, while B who owns one hundred dollars worth of personalty is taxed; — and yet obviously A is more able to pay than is B. If the state can collect a tax of this sort, solely from the owners of personalty lying without the jurisdiction, a tax on red-headed persons to the exclusion of others, being scarcely less arbitrary, would seem to be legal. Taxation is relative; the amount that A pays must bear some fair ratio to the amount that B pays, and as the present case infringes upon this principle, by taxing A without taxing B who is equally able to pay, it is invalid. It might be suggested that, since this form of taxation has been practiced for a long time, it has become sanctioned by law and hence is due process. The court, however, seems properly to have considered that, for the decision of the question at issue, a broader concept of due process of law is required.

“TENTATIVE” TRUSTS IN SAVINGS BANK DEPOSITS. — A trust may be created without consideration either by a transfer of the property to another as trustee,¹ or, since Lord Eldon’s time, by a mere declaration by the owner that he holds the property in trust.² Though a power of revocation may be reserved,³ a trust without such power, when once created, is irrevocable.⁴ These fundamental principles have sometimes been lost sight of by the courts in considering cases of trust deposits in savings banks, a common form of gratuitous trusts. Massachusetts, for example, arbitrarily requires notice to the beneficiary.⁵ New York also appears to depart from principle. By a case decided in that jurisdiction last year, it was held, contrary to previous decisions of the lower court,⁶ that the mere fact that a deposit stands in the depositor’s name as “trustee” for another is not ground for holding that an irrevocable trust was created, but establishes the creation of a “tentative” trust merely, revocable by the depositor in his lifetime.⁷ As a question of evidence, the decision is not unreasonable, for in view of the common practice of making deposits in the form of trust accounts to evade some rule of the bank,⁸ it is perhaps unsafe to find from the mere form of deposit an actual intent to create a trust; and if such intent is not found, no trust should be held created.⁹ But the decision strikes deeper than that; it assumes that a trust was created, but treats it as revocable. Moreover, the court says that if the depositor dies without having revoked the trust, the presumption arises that an absolute trust was created as to the balance on hand at his death. Much can be said, it is true, in favor of the result of the decision, for it gives effect to the intention with which such deposits are commonly made by the humbler class, namely, to enjoy full

¹ Van Cott v. Prentice, 104 N. Y. 45. See also Ames, Cases on Trusts, 2d ed., 233 n.

² *Ex parte* Pye, 18 Ves. 140.

³ Perry, Trusts, 5th ed., § 104. See also Ames, Cases on Trusts, 2d ed., 233 n.

⁴ See Dickerson’s Appeal, 115 Pa. St. 198, 210.

⁵ Clark v. Clark, 108 Mass. 522.

⁶ Robertson v. McCarthy, 66 N. Y. Supp. 327; Jenkins v. Baker, 78 N. Y. Supp. 1074.

⁷ Matter of Totten, 179 N. Y. 112.

⁸ As a rule limiting individual deposits, or giving a higher rate of interest on small deposits. See Brabrook v. Boston Bank, 104 Mass. 228; Weber v. Weber, 9 Daly (N. Y.) 211.

⁹ Brabrook v. Boston Bank, *supra*.